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DECISION



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THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D. C. 20548
Country Proc II

FILE: B-194593

DATE: December 20, 1979

MATTER OF: Exide Power Systems Division,
ESB Incorporated

DIGEST:

1. Protest questioning acceptability of low offer is denied as low offeror took no exception to any solicitation requirement, even if materials submitted with proposal were incomplete to show conformance.
2. Whether successful offeror is able to meet specification requirements is a matter of responsibility, and GAO does not review affirmative determinations of responsibility except under circumstances not applicable here.

Exide Power Systems Division, ESB Incorporated (Exide) protests the award of a contract for storage batteries to the low offeror, Ramak Industries, Division of Equipment Engineering Company (Ramak) under request for proposals (RFP) N00104-78-R-XA46, issued by the Navy Ships Parts Control Center, Naval Supply Systems Command (Navy). For the reasons set forth herein, the protest is denied in part and dismissed as to the remainder.

The RFP provided that the storage batteries be in accordance with a designated Federal Specification which required certain life cycle tests. Under the RFP and specification, responsibility for inspection was with the supplier with the Government reserving the right to perform any of the required inspections. The RFP required the battery supplier to submit to the Navy one copy of inspection test results for the items being provided, with supporting data.

Exide contends that the offer submitted by Ramak was not "responsive" to the RFP because the battery offered does not meet the performance requirements of the designated Federal Specification as Ramak had been disqualified on previous occasions by the Navy and Department of the Army for failure to meet capacity and life cycle standards. In support of its contentions, Exide cites our decision B-176708, February 2, 1973, wherein we upheld the validity of the life cycle testing requirement in a protest by Ramak which properly had been found nonresponsive. Exide also asserts that the test data submitted by Ramak with its offer did not establish compliance with the specification performance requirements and that Ramak had not done so more than 120 days after contract award.

It is the position of the Navy that the RFP did not require the furnishing of compliance test data prior to contract award, that the offer submitted by Ramak took no exception to the requirements of the Federal Specification, and that the test data submitted by Ramak with its offer was informational only and in no way conditioned Ramak's offer to supply batteries in accordance with the solicitation requirements. After a preaward survey, the contracting officer determined that Ramak was a responsible offeror and awarded it the contract.

In our opinion, the solicitation did not require compliance test data to be submitted prior to award of any contract. The requirement to inspect and perform certain tests set forth in the RFP and Federal Specification pertained to the items to be supplied which did not have to be in existence when the offer was submitted, although test data from prior production runs could be furnished. Even granting the protester's allegation that the test data submitted by Ramak was incomplete and, therefore, did not show compliance with all requirements of the specification, there was no indication in Ramak's offer that it did not intend to furnish the required data or fully conforming batteries in performing the contract. We believe Ramak submitted an unqualified offer and bound itself to supply the required data and conforming batteries; however, whether it does so is a matter

of contract administration which is the responsibility of the contracting agency and beyond the scope of review under our Bid Protest Procedures. Industrial Maintenance Services, Inc., B-195216, June 29, 1979, 79-1 CPD. 476. This portion of the protest is denied.

Exide's contention that the battery offered by Ramak does not meet the specification requirements is really an attack on Ramak's capability to supply the required batteries, a matter of responsibility. While we consider a protest by an offeror which has been found to be non-responsible as in B-176708, supra, we do not review affirmative determinations of responsibility unless either fraud on the part of procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Dumont Oscilloscope Laboratories, Inc., B-195113, October 24, 1979, 79-2 CPD 286; Bogue Electric Manufacturing Company, B-194222, June 18, 1979, 79-1 CPD 431. Neither exception is applicable here, and we dismiss this allegation.

The protest, therefore, is denied in part and dismissed as to the remainder.



For The Comptroller General
of the United States